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10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF ARIZONA**

12

13 JAMES ARNETT,

14 Plaintiff,

15 vs.

16 BENJAMIN SNOW HOWARD, LIFELINE
17 MEDIA LLC, a Texas entity, NATIONWIDE
AFFORDABLE HOUSING, a Texas
18 corporation, and the BEN HOWARD TRUST,
19 an IDAHO TRUST,

20 Defendants.

21 **CASE NO. CV-12-0311-TUC-DCB-DTF**

22 **MOTION TO STRIKE PLAINTIFF'S
"MOTION FOR LEAVE TO FILE SUR-
REPLY IN OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS
REPLY"**

23 **&**

24 **MEMORANDUM IN SUPPORT**

25 **(Assigned to Magistrate Judge D.
Thomas Ferraro)**

26 Defendants Benjamin Snow Howard ("Howard"), Lifeline Media LLC ("Lifeline"),
Nationwide Affordable Housing ("NAH"), and the Ben Howard Trust ("the Trust") request,

1 under LRCiv 7.2(m)(1), that the Court strike Plaintiff's recent filing entitled "Motion for
 2 Leave to File Sur-Reply In Opposition to Defendants' Motion to Dismiss Reply."¹
 3

4 Plaintiff's filing is not authorized by any rule or order. The Rules only allow a
 5 motion and memorandum in support, a responsive memorandum in opposition to a motion,
 6 and a reply.² This exact Court and Magistrate Judge recently faced a nearly identical
 7 procedural situation in *Murchison v. Tucson Unified School District*.³ In that case, another
 8 pro se plaintiff attempted to file a "sur-reply" to the defendants' motion to dismiss. The
 9 defendants filed a motion to strike the sur-reply, on the grounds that it was not allowed
 10 under the local rules. This Court granted the defendants' motion to strike the sur-reply.⁴

11 Here, Plaintiff's filing should receive identical treatment. His filing is not allowed
 12 by the Federal Rules of Civil Procedure, the Local Rules, or by any order. Additionally,
 13 Plaintiff's filing is unnecessary because Defendants did not raise any substantially new
 14 issues in their Reply in Support of Motion to Dismiss.⁵

15 Furthermore, Plaintiff also requested in his filing that the Court strike Defendants'
 16 Reply in Support of Motion to Dismiss.⁶ However, Plaintiff's request should be denied
 17 because there is no proper legal basis or grounds for the Court to strike Defendants' Reply
 18 brief.

19 Plaintiff's continual ignorance of or disregard for the rules is delaying and driving up
 20 the costs of this litigation. Defendants emphasize that in this Circuit, "pro se litigants are not
 21 excused from following court rules."⁷

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25 1 (Document 32).

26 2 LRCiv 7.2(a)-(d).

27 3 2012 WL 4762462 (D. Ariz.).

4 *Id.* at *1.

5 (Document 26).

6 (Document 26).

7 *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 382 (9th Cir. 1997).

1 RESPECTFULLY SUBMITTED this 26th day of November, 2012.
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4

5 **DAVIS MILES MCGUIRE GARDNER, PLLC**

6 By /s/ Scott F. Gibson
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10 *Attorneys for Defendants*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing

MOTION TO STRIKE PLAINTIFF'S "MOTION FOR LEAVE TO FILE SUR-

REPLY IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS REPLY" &

MEMORANDUM IN SUPPORT was served upon all persons entitled to receive notice in

this case via ECF notification or by U.S. Mail on November 26, 2012 to the following:

Magistrate Judge D. Thomas Ferraro
United States District Court
Evo A. DeConcini U.S. Courthouse
405 West Congress Street, Suite 6660
Tucson, AZ 85701

James Arnett
9288 N. Monmouth Court
Tucson, AZ 85742
Plaintiff Pro Per

/s/ Annette T. Hernandez